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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 JP MORGAN CHASE BANK, N.A.,

8 Plaintiff(s),

9 v.

10 WILLISTON INVESTMENT GROUP, LLC,
11 et al.,

12 Defendant(s).

Case No. 2:16-CV-2874 JCM (GWF)

ORDER

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14 Presently before the court is defendant Heritage Estates Homeowners' Association's (the
15 "HOA") motion to dismiss JPMorgan Chase Bank, N.A.'s ("JPM") complaint. (ECF No. 9). JPM
16 filed a response (ECF No. 16), and the HOA filed a reply (ECF No. 17).

17 **I. Introduction**

18 The instant litigation involves competing interests in the real property at 5919 Stone
19 Hollow Avenue, Las Vegas, Nevada 89156. (ECF No. 1). JPM asserts claims of declaratory relief,
20 quiet title, and unjust enrichment. (*Id.*).

21 The HOA argues that, *inter alia*, Nevada Revised Statute ("NRS") § 38.310(1)(a), a statute
22 of limitation, laches, and a failure to properly allege superior title all warrant the dismissal of
23 JPM's claims. *See* (ECF No. 9).

24 Notably, the foreclosure sale allegedly took place on December 14, 2012, and JPM initiated
25 the instant action on December 12, 2016. (ECF No. 1).

26 **II. Legal Standard**

27 The court may dismiss a plaintiff's complaint for "failure to state a claim upon which relief
28 can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "[a] short and

1 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).
2 Although rule 8 does not require detailed factual allegations, it does require more than labels and
3 conclusions. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Furthermore, a formulaic
4 recitation of the elements of a cause of action will not suffice. *Ashcroft v. Iqbal*, 556 U.S. 662,
5 677 (2009) (citation omitted). Rule 8 does not unlock the doors of discovery for a plaintiff armed
6 with nothing more than conclusions. *Id.* at 678–79.

7 To survive a motion to dismiss, a complaint must contain sufficient factual matter to “state
8 a claim to relief that is plausible on its face.” *Id.* A claim has facial plausibility when the plaintiff
9 pleads factual content that allows the court to draw the reasonable inference that the defendant is
10 liable for the misconduct alleged. *Id.* When a complaint pleads facts that are merely consistent
11 with a defendant’s liability, and shows only a mere possibility of entitlement, the complaint does
12 not meet the requirements to show plausibility of entitlement to relief. *Id.*

13 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply
14 when considering a motion to dismiss. *Id.* First, the court must accept as true all of the allegations
15 contained in a complaint. However, this requirement is inapplicable to legal conclusions. *Id.*
16 Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. *Id.*
17 at 678. Where the complaint does not permit the court to infer more than the mere possibility of
18 misconduct, the complaint has “alleged – but not shown – that the pleader is entitled to relief.” *Id.*
19 at 679. When the allegations in a complaint have not crossed the line from conceivable to
20 plausible, plaintiff’s claim must be dismissed. *Twombly*, 550 U.S. at 570.

21 The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d 1202,
22 1216 (9th Cir. 2011). The *Starr* court held:

23 First, to be entitled to the presumption of truth, allegations in a complaint or
24 counterclaim may not simply recite the elements of a cause of action, but must
25 contain sufficient allegations of underlying facts to give fair notice and to enable
26 the opposing party to defend itself effectively. Second, the factual allegations that
are taken as true must plausibly suggest an entitlement to relief, such that it is not
unfair to require the opposing party to be subjected to the expense of discovery and
continued litigation.

27 *Id.*

1 **III. Discussion**

2 As an initial matter, declaratory judgment is a form of relief and not itself an independent
3 claim, particularly where the factual and legal allegations asserted in support of this claim are
4 largely reproduced in plaintiff's claim for quiet title. *See* (ECF No. 1); *see also* 28 U.S.C. § 2201(a)
5 (providing a remedy).

6 **A. Statutes of limitation**

7 There is no issue of timeliness in this case because the action was brought within four years
8 of the foreclosure sale, and the statutes of limitation for unjust enrichment and quiet title provide
9 periods of four years and five years, respectively. *See U.S. Bank Nat'l Ass'n v. Woodland Vill.*,
10 No. 3:16-cv-00501-RCJ-WGC, 2016 WL 7116016, at *3 (D. Nev. Dec. 6, 2016); *In re Amerco*
11 *Derivative Litig.*, 252 P.3d 681, 703 (Nev. 2011) (citing NRS 11.190(c)(2)); (ECF No. 1).

12 **B. Exhaustion**

13 A claim of unjust enrichment must be mediated pursuant to NRS 38.310 before that claim
14 can be asserted in an action. *Bank of Am., N.A. v. Tapestry at Town Ctr. Homeowners Ass'n*, ---
15 F. Supp. 3d ----, No. 2:16-cv-255-JCM-NJK, 2017 WL 2882700, at *3 (D. Nev. July 6, 2017)
16 ("*Tapestry*"); *see also* (ECF No. 9) (unintentionally challenging the fulfillment of the mediation
17 requirement in this case). Thus, this claim will be dismissed as unexhausted.

18 However, this requirement does not extend to plaintiff's quiet title claim. *See Tapestry*,
19 2017 WL 2882700, at *2; *see also* Nev. Rev. Stat. § 38.330.

20 **C. Allegations of superior title**

21 Under Nevada law, "[a]n action may be brought by any person against another who claims
22 an estate or interest in real property, adverse to the person bringing the action for the purpose of
23 determining such adverse claim." Nev. Rev. Stat. § 40.010. "A plea to quiet title does not require
24 any particular elements, but each party must plead and prove his or her own claim to the property
25 in question and a plaintiff's right to relief therefore depends on superiority of title." *Chapman v.*
26 *Deutsche Bank Nat'l Trust Co.*, 302 P.3d 1103, 1106 (Nev. 2013) (citations and internal quotation
27 marks omitted). Therefore, for plaintiff to succeed on its quiet title action, it needs to show that
28 its claim to the property is superior to all others. *See also Breliant v. Preferred Equities Corp.*,

1 918 P.2d 314, 318 (Nev. 1996) (“In a quiet title action, the burden of proof rests with the plaintiff
2 to prove good title in himself.”).

3 Upon review of the complaint in this action, JPM has failed to sufficiently assert allegations
4 of fact or law suggesting it may be entitled to quiet title. (ECF No. 1).

5 To clarify, JPM: (1) has not alleged how it has standing to assert a claim based on the
6 Federal Housing Administration’s interest in the property; (2) has not alleged why it would be
7 entitled to additional notice when it acquired its interest in the property *after* the HOA had already
8 recorded a notice of foreclosure sale; (3) admits that it “made preservation payments for the
9 Property” *after* the foreclosure sale had already occurred; (4) makes conclusory allegations as to
10 how there was some kind of “fraud, oppression, and/or unfairness” and therefore does not make
11 allegations sufficient to surmount the *Long v. Towne*, 639 P.2d 528, 530 (Nev. 1982), test for
12 commercial unreasonability;¹ (5) ignores the narrow holding in *Bourne Valley Court Trust v. Wells*
13 *Fargo Bank, N.A.*, 832 F.3d 1154 (9th Cir. 2016), *cert. denied*, No. 16-1208, 2017 WL 1300223
14 (U.S. June 26, 2017) (“Bourne Valley”); (6) is incorrect in its suggestion that *SFR Investments*
15 *Pool 1 v. U.S. Bank*, 334 P.3d 408 (Nev. 2014), should not be applied retroactively; and (7) does
16 not recognize that the allegation of the HOA’s failure to identify the super-priority portion of an
17 HOA lien does not, by itself, entitle a plaintiff to quiet title. (ECF No. 1 at 2–11); *see also Bank*
18 *of America, N.A. v. Travata and Montage at Summerlin Centre Homeowners Ass’n, et al.*, No.
19 2:16-cv-473-JCM-VCF, 2017 WL 3037785, at *2 (D. Nev. July 18, 2017) (collecting cases); *Bank*
20 *of Am., N.A. v. Valley View Meadows Homeowners Ass’n, Inc.*, No. 2:16-cv-275-JCM-CWH, 2017
21 WL 2870087, at *8 (D. Nev. July 5, 2017); *Nationstar Mortg., LLC v. Maplewood Springs*
22 *Homeowners Ass’n*, --- F. Supp. 3d ----, No. 2:15-cv-1683-JCM-CWH, 2017 WL 843177, at *7
23 (D. Nev. Mar. 1, 2017).

24 Thus, JPM has not plausibly pled that it is entitled to quiet title. *Starr*, 652 F.3d at 1216
25 (9th Cir. 2011).

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28 ¹ The complaint also contains a variety of other relevantly conclusory allegations. *See*
(ECF No. 1).

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Accordingly,

DATED August 1, 2017.

James C. Mahan
UNITED STATES DISTRICT JUDGE